Democracy, Religious Diversity, and Blasphemy Law in Indonesia

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Introduction

Indonesia has evolved to be one of the most democratic Muslim countries in the world. The story began with the demise of Suharto's New Order authoritarian regime in 1998 that heralded a freedom of expression. Despite its success in undertaking the whole process of democratic transition, Indonesia by no means has encountered no challenge in transforming its political landscape. The biggest challenge was related to the rise of militant Islamist groups that engulfed the political arena of Indonesia by calling for jihad and other violent actions. Interestingly, although these groups have lost their momentum to take control over the Indonesian public sphere along with the on-going democratic consolidation and global war on terror, violent discourses and actions continue resonating. Demonstrations organised by conservative Muslim groups, including the Indonesian Muslim Solidarity Forum (Forum Solidaritas Umat Islam) and the Anti-Apostasy Movement Alliance (Aliansi Gerakan Anti Pemurtadan), erupted against minority religious groups. They threatened to close and burn down a dozen churches deemed illegal and suspected to be the headquarters where hidden Christianisation projects are taking place. Conflicts occurred not only between religious groups, but also within religious groups. Key examples of conflict occurring within religious groups include recent attacks on Ahmadiyya and Shiite communities in several Indonesian provinces.

The growing tide of religious conflicts and violence against minorities after Suharto seems inseparable from the failure of *Reformasi* to touch upon the fundamental issue of reforming the state's management of religious diversity that requires democracy as a precondition for it to develop. Without a significant touch on this issue, the position of religion vis-a-vis democracy has remained problematic for religion is at the

intersection of a struggle between state, society and political forces. Individuals, groups and political forces thereby compete to represent the right to define boundaries in support of their organized claims and delegitimize those of others. The matter takes more urgency as democracy necessitates sustained responsibility of individuals, groups and the state to promote fundamental values, notions, and principles which are essential for democracy. As Almond and Verba (1989: 340-345) have put it, there is a strong correlation between successful democratization of a country and democratic culture and structure of polity. From this point of view, democratic culture is an amalgamation of freedom and participation on the one hand, and norms and attitudes on the other. It is rooted in a civic culture that features high levels of social trust, civicness, mutual cooperation and responsibility.

This paper will look at how the explosion of militant religious activism and violence against minorities in post-Suharto Indonesia is embedded in the state's failure to apply a proper management of religious diversity and civic pluralism. In the bottom of this issue lies controvertial Law No. 1 of 1965 on the prevention of the abuse or insulting of a religion, known as the Blasphemy Law. Debates have abounded on the extent to which the Law has transgressed the principles of religious freedom guaranteed by the Indonesian Constitution. This paper will thus also examine petitions filed by human rights activists and civil society organizations to demand judicial reviews of the Law before the Constitutional Court.

Religion and State in Indonesia

Indonesia is home to the largest Muslim population in the world. According to the population census of 2010, 87.18% per cent of 237.6 million of Indonesians are Muslims, 6.96 per cent are Protestants, 2.9 per cent are Catholics, 1.69 per cent are Hindus, 0.72 per cent are Buddhists, and 0.38 per cent are others. Despite the freedom guaranteed by the Indonesian Constitution (article 29) "for every citizen to practice his respective religion and belief," interestingly religious tensions and conflicts have been rife throughout the modern Indonesian history. The tensions and conflicts were rooted in the political dynamics of Indonesia in the run-up toward her independence in 1945. As a result of the opposition of Sukarno-led secular nationalists and like-minded leaders who

preferred a secular republican model based on the Pancasila and the Constitution of 1945, the struggle of Islamist leaders in the Majelis Syura Muslimin Indonesia (Indonesian Muslim Consultative Assembly, Masyumi) to implement what was later known as the Jakarta Charter ended in failure.[2] This failure has been perceived by some Muslims a betrayal of the state toward their rights as a majority. Accordingly, the issue of the Jakarta Charter has constituted a recurrent theme in the Indonesian politics (Benda 1958; Anderson 1961; Boland 1982).

Given such a historical trajectory and the fact that its population is tremendously large, with a great diversity of religion, ethnicity, culture and tradition, Indonesia indisputably needs a proper strategy to manage religious diversity in order for it to guarantee inter-cultural tolerance and peaceful coexistence among different religious groups. The New Order realized this situation and thus endeavoured to manage the diversity, yet through a mechanism that often manipulated the diversity itself. Suharto inherited from their predecessor Law No. 1 of 1965 on the prevention of the abuse or insulting of a religion.[3] This Law is notorious for its incompatibility with principles of religious freedom as guaranteed by the Indonesian Constitution and human rights. Despite the very existence of various forms of religious beliefs in Indonesian society, it recognized only five religions: Islam, Christianity, Catholicism, Hinduism, and Buddhism.

Along with the spirit of this Law, shortly after his ascendancy to power in response to the failed communist coup in September 1965, Suharto began to limit spaces for religious freedom and people's participation in politics. He rejected the quest for revitalization of Muslim politics, for instance, but at the same time advanced a policy of marginalizing political Islam (van Bruinessen 1996). To shore up his policy, Suharto popularized development jargon and imposed the Pancasila as the state's governing doctrine. Any aspirations that challenged the Pancasila could be easily labelled either "left extreme" or "right extreme"; the Anti-Subversive Act inherited from Sukarno was used by the state to justify its methods. Through the indoctrination program called the *Pedoman Penghayatan dan Pengamalan Pancasila* (Guide to Comprehension and Practice of the Pancasila, P4), among other instruments, the Pancasila was systematically embedded in the minds of Indonesia's citizens.

To strengthen its hegemony over society and remove remnants of the Indonesian Communist Party, Suharto's New Order intensified the application of the Law No.1 of 1965 by supervising *Aliran Kepercayaan* (Javanese Mystical Sects). Positioned at the front guardian for this matter, the Attorney General's Office subsequently formed the Team PAKEM (Pengawas Aliran Kepercayaan Masyarakat, or the Supervision of Aliran Kepercayaan in Society). This team was charged with a task to watch various forms of belief in society considered closely related to the Indonesian Communist Party. During the period from 1971 to 1983 the Team PAKEM banned six Aliran Kepercayaan dan also sects of official religions, including Aliran Darul Hadist (Islam Jamaah), Aliran Kepercayaan Manunggal, Agama Budha Jawi Wisnu, Aliran Sanyoto, Saksi Jehova and Inkarussunnah (Lindholm 2010: 22-23).

The New Order established official religious bodies and institutions representing the recognized religions, including Majelis Ulama Indonesia (MUI, the Indonesian Council of Ulama) for Islam, Persekutuan Gereja-Gereja di Indonesia (PGI, the Communion of Churches in Indonesia) for Protestanism, Bishop's Conference of Indonesia (KWI, Konferensi Waligereja Indonesia) for Catholicism, Perwakilan Umat Buddha Indonesia (Walubi, the Indonesian Buddhist Council Association) for Buddhism, and Hindudharma for Hinduism.These institutions are granted the authority to control the forms of religious activities and interpretations in society and define whether there is any deviation from the fundamental religious teachings of the religions (Lindholm 2010: 24).

The establishment of these semi-governmental bodies of the recognized religions was also aimed at domesticating the social and political forces of religious communities. To the Indonesian Council of *'Ulama'*, for instance, the function of issuing religious legal opinions (*fatwa*s) and religious advises (*tausiyah*s) would be assigned. The nature of the Indonesian Council of Ulama as a body whose creation was instigated by the government was soon visible. The idea for the establishment of this council was made known to public during a national conference of Muslim preachers held in 1970 by the Pusat Dakwah Islam Indonesia (Centre for Indonesian Islamic Propagation). Mukti Ali, a modernist Muslim scholar appointed as a minister of religious affairs in 1971, recalled the idea and facilitated another conference of Muslim preachers in 1974. Suharto came to deliver opening address to this conference, in which he insisted the need for a nationwide

body of *'ulama'* that can serve as, among other functions, the translator of the concepts and activities of development as well as the mediator between the government and *'ulama'* (Hosen 2004; Ichwan 2005; Mujiburrahman 2006). The Indonesian Council of Ulama was officially established a year later and Hamka was elected as its first chairman. Shortly after its establishment, the Majelis Ulama Indonesia was involved in polemics and issued a number of (controversial) *fatwa*s legitimizing government policies (Mudzhar 1993).

At the end of the 1980s, Suharto began to recognize the emotive and familiar message of Islam. While suppressing any *Kepercayaan* and sects considered deviant from the fundamental teachings of the recognized religions, he introduced a policy of accommodating Islam by focusing particularly on the accentuation of Islamic symbols in public discourse. Islam was thus systematically incorporated in the frame of reference of the state to offset the increasingly plausible challenge to the legitimacy of Suharto's political leadership (Liddle 1996). In this context, the Directorate General of Elementary and Secondary Education, for instance, issued a new regulation on student uniforms, lifting the ban for female students to wear headscarves (*jilbab*) while attending school. Suharto himself and his family went to Mecca to perform the *hajj* pilgrimage in 1991. Since then cabinet members and high ranking officials have no longer hesitated to declare the Islamic greeting, *Assalamu'alaikum,* in the opening passage of their speeches and this greeting is becoming increasingly popular. They also sought to demonstrate their concern with various Islamic affairs by, for instance, participating in religious festivals and celebrations.

In this sense, the strategy of the regime appeared to succeed in "subduing" pro-Islamist groups and indeed created "regimist Muslims," who did not recoil from showing themselves as a real partner of the state (Hefner 1993; 2000). This incorporatist inclusion of Muslim interests had in turn contributed to a re-politicisation of Islam and the diversifying demands and challenges of society difficult for the state to contain, channel, neutralise, or co-opt effectively (Porter 2002). In his comparative study on Pakistan and Malaysia Nasr (2001) refers to such a strategy as "Islamic leviathan," which allowed regimes in power to avoid fundamental reforms in their economies, political structures, and policy making. He argues that as a facet of the state's drive to expand its power and

control through manipulation of ideology, the leviathan strategy hardly bears any positive result. In fact, the New Order's Islamisation trend was showing signs of decay when a wave of *Reformasi* forced Suharto to step down in May 1998.

Managing Religion in Transition

In the atmosphere of *Reformasi* brought about by Suharto's departure *shari'a* appeared to be a significant issue providing the medium through which collective actors associated with different movements within a cycle assign their aspirations and interests. This issue has facilitated the attempts made by the parties to propose the introduction of the *shari'a* into the Constitution, thus giving the *shari'a* a constitutional status. Two Islamic parties, United Development Party (PPP) and Moon and Crescent Party (PBB), were at the forefront to revive debates on seven words "*dengan kewajiban menjalankan syariat bagi pemeluknya,"* which had been removed from the Preamble to the Indonesian Constitution only a day after Independence.[4] Known as the *Piagam Jakarta* (Jakarta Charter), the words stipulate the obligation for adherents of Islam to follow the *shari'a*, as indicated earlier. Later, the debates shifted from the idea of Islam becoming the foundation of the state (*Dasar Negara*) to the amendment of Article 29 of the Constitution (Hosen 2005).

Although these attempts ended in failure, the demands for the application of the *shari'a* have resonated across the country and to some extent materialized with the enactment of *shari'a* by-laws (*perda*). The introduction of regional autonomy packages and direct elections of regional administrators (*pilkada*) gave a remarkable boost to the attempts made by the *shari'a* supporters to appropriate religious laws for the interest of their own, at the expense of individual freedoms and the rights of women and religious minorities (Hasan 2007).

The mounting demand for the application of the *shari'a* by-laws constitutes an inevitable consequence of inappropriate management of religious diversity by the state. As we have seen, the interest of the state to maintain its legitimacy by politicising religious symbols has made religion function more as a means of social control. Religion plays no role in fostering social cohesion, which Putnam (2005: 2) explains as a term that encompasses "issues of social justice, tolerance, inclusion and social integration."

Coupled with the weakening of state power, failure to instil these values would take a risk of an increase in distrust and conflict in the society (Bouma 2008; Sajoo 2008).

The absence of trust that tied up different social groups also facilitated the eruption of riots and communal conflicts divided along religious, racial, and ethnic lines. Reflecting a common outcome of economic and socio-political instability, ethnic and religious conflicts that flared up in various regions of Indonesia threatened a society apparently imbued with a culture of tolerance based on harmonious inter-ethnic and inter-faith relations. In the Moluccas a fight between two youths quickly devolved into the bloody communal violence between Christians and Muslims, which claimed thousands of lives and wounded many others. Likewise, in Central Sulawesi, West and Central Kalimantan, protracted bloody communal confrontations which involved different ethnic groups resulted in property destruction and the mass exodus of refugees (Coppel 2005; van Klinken 2007).

In line with the democratic consolidation taking place in Indonesia, these conflicts have gradually come to an end. The problem has not been dissolved yet, however. Animosity against minorities have increased as a result of the identity politics proliferating in post-Suharto Indonesian public sphere. Opposition against minority groups such as Ahmadiyya and Shi'ite from the majority Muslim community erupted in various Indonesian provinces. Many of them were expelled by mobs attacking their houses and places of worship. Attacks also occurred against Christian communities. In January 2012, for example, members of the Indonesian Muslim Communication Forum and the Islamic Reform Movement harassed Taman Yasmin Church members who were conducting a service at a member's house. In another instance, in March the same year, the Batak Protestant Church Taman Sari Church in Bekasi was demolished following opposition from the Taman Sari Islamic People's Forum (Hui 2012).

The Law No. 1 of 1965 on Blasphemy

Discussions have abounded on the issue of whether the Law No. 1 of 1965 plays a role in the state's failure in protecting religious minorities. This Law is deemed responsible for the growing attacks against religious minorities targeted by hard-line Muslims on the basis of an accusation that their religious belief and practice amount to

blasphemy or defamation of a religion, which is prohibited by the Law. Ahmadiyya doctrine that believes in the central position of Mirza Ghulam Ahmad as a prophet after Muhammad charged with a special task to reform and re-interpret Muhammad's messages through his holy *Tadzkira* is believed to have not only deviated from the fundamental teachings of Islam but also insulted the Muslim majority recognized belief. Likewise, Shiites are considered no less dangerous than Ahmadiyya for their doctrine on *imamate* is believed to be in sharp contrast with that of Sunni majority.

Article 1 of the Law No. 1 of 1965 prohibits "[e]very individual ... in public from intentionally conveying, endorsing or attempting to gain public support in the interpretation of a certain religion embraced by the people of Indonesia or undertaking religious based activities that resemble the religious activities of the religion in question, where such interpretation and activities are in deviation of the basic teachings of the religion". The Law also creates a new provision, Article 156(a) of the Criminal Code which imposes a five year prison sentence "for whosoever in public intentionally express their views or engage in actions: a. that in principle incite hostilities and considered as abuse or defamation of a religion embraced in Indonesia. This article is to be read in conjunction with the provisions of Article 1 of the Law as mentioned above.

Hard-line Muslims and conservative organizations used the Law not only to intimidate Muslim minorities such as Ahmadiyya and Shi'ite communities but also to criminalize them. This is quite problematic in a situation when Indonesia is consolidating its newly born democracy that necessitates respect for pluralism and multiculturalism. Despite mounting criticism against the state policies towards religious sects and minorities, the government remained ambivalent to the principle of religious diversity. In response to the Ahmadiyah case, for instance, in 2008, the Minister of Religious Affairs, Attorney General and Minister for Internal Affairs issued a Joint Decree that cautioned members of the Jemaat Ahmadiyah Indonesia (JAI) against committing the offences indicated in Article 1 of the Law. In addition, it "warn[s] and instruct[s] the followers, members and/or leaders of the ... (JAI), provided that they profess to being believers of Islam, to cease the propagation of interpretations and activities in deviation of the teachings of Islam, that involves the propagation of an ideology that believes in the presence of a prophet along with his teachings after the Prophet Muhammad" (Article 3).

Furthermore, it seeks “to warn and instruct members of the community to maintain and safeguard harmony among believers of different religions as well as unity in public order within a community by not engaging in violation of the law against the followers, members and/or leaders of the ... (JAI)” (Article 4). Failure to comply with these provisions would result in sanctions according to the Criminal Code, especially Article 156a which is the complement to the Law.

Understanding the situation, human right activists and civil society organizations expressed their concern with the Law No. 1 of 1965 as one of the factors behind continued religious intolerance in the country. They filed a demand for constitutional review of the Law before the Constitutional Court. No less than 54 legal counsels unified in “the Advocating Team of Religious Freedom” represented the petitioners to argue that the Law is in conflict with the Indonesian Constitution in terms of both formal and material aspects. The Law was issued in the era of guided democracy as a result of Presidential Decree of 1959 which gave an unlimited power to Sukarno. Hence, unlawful from the perspective of the constitutional law. They insisted that the Law has transgressed the principle of religious freedom as stipulated in article 28E (1 and 2), article 28I (1), and article 29 (2) of the Indonesian Constitution (Lindholm 2010; Crouch 2012; Nurhasanah 2014). They believed that the Constitution is very clear in guaranteeing the rights of every citizen to practice his/her own religion and faith. In other words, religious freedom is a non-derogable right guaranteed by the Constitution and thus, no one, even the state, has the right to decrease or diminish it.

Moreover, the petitioners were of the opinion that the definition of the act of blasphemy in Article 1 of the Law No. 1 of 1965 is quite loose: Whether someone or a group of people, such as Ahmadis or Shi’ites, who express their own theological belief, which is certainly different from that of the Muslim Sunni majority, can be considered to have committed blasphemy. The same holds true for its elucidations which limit the number of the official religions into five and now six, after Confucianism was recognized as an official religion, and this can serve as a pretext to degrade the freedom of religion guaranteed by the Constitution. In the words of the petitioners, Article 1 of the Law justifies the state’s ambivalence toward religious diversity and even its discriminative attitude toward certain religious communities. Apart from that, the petitioners were also

of the opinion that the regulation granting the Minister of Religious Affairs, Attorney General, and Minister of Internal Affairs the authority to involve in the process of prohibiting an allegedly blasphemous organization or sect transgresses the principle of due process of law that requires any forms of dissolution and prohibition be carried out through a fair, independent, and open trial.

In 2010, the Constitutional Court decided the case by affirming the legality of the Law No. 1 of 1965. According to the Court, the legal norms of the Law are not in conflict with the Constitution for they are aimed at protecting existing religious communities, especially the freedom of the mainstream religious communities to believe and practice their respective religions. In other words, the Law is deemed necessary for Indonesia to protect religions from any insulting actions. Thus, the Constitutional Court believed that, despite any weaknesses, the existence of the Law has been instrumental to protect people against anyone or a group who deliberately disturb and even harm their religious belief. The Constitutional Court claimed that problems sometimes occur indeed, but at a practical level, when, for instance, judges interpreted the articles in the Law with their narrow understanding and perspectives (Crouch 2012; Lukito 2014).

The Second Judicial Review

Discontented with the above result, in 2012 a group of lawyers united in Universalia Legal Aid Institute, supported by Indonesian Association of Ahl al-Bayt, filed a demand to the Constitutional Court for the second judicial review on the Law No. 1/PNPS/1965 on behalf of those claiming to be victims of the Law. This petition was pleaded in response to brutal attacks by Sunni Madurese majority against Shiite community, followers of Tajul Muluk, in Sampang Madura. The attacks caused a dosen casualties and displaced hundreds of Shiites from their home town.[5] The Indonesian Council of Ulama of East Java issued a *fatwa* legitimizing the attacks by stating that Shi'ite teachings, i.e., those of the Twelver Shi'ism (Imamiyah Ithna Ash'ariyah) or those using the pseudonym like Madzhab Ahl al-Bayt and the other similar ones, as well as the teachings similar with the basic doctrines of the Twelver Shi'ism, are misguided and misleading. More dramatically, Tajul Muluk was brought to trial. Presecutors charged him of having

committed a criminal offense as stipulated in Article 156a on the basis of various reasons, including:

1. He added the standard *shahada* to acknowledge the very existence of twelve *imam*s among the followers of Ithna Ash'ariyya and Ja'fariyya;
2. He excommunicated some Companions, father-in-laws and wives of the Prophet Muhammad.
3. He forced his followers to commit *taqiyya* (hidding their belief) before the Sunni majority.

The petitioners argued that despite the fact that the Constitutional Court's decision in 2009 entirely rejected the petition pleaded in the first judicial review, the Law remains in need to be reviewed as the Constitutional Court's judges themselves clarified that Article 156a of the Criminal Code used to criminalize the victims should be interpreted carefully and appropriately by police, prosecutors and judges. This clarification indicates the judges' inconvenience of the Law. One is puzzled indeed on the extent to which the law enforcement apparatus could appropriately interprete the article. Without a clear guideline to interprete the article, the petitioners argued, the issue remains constitutionally problematic. Even, the use of Article 156a might be inconsistent with the spirit of the Law and, thus, potential to disturb constitutional right of a citizen. In their opinion, Tajul Muluk is a clear example of how a citizen should lose his freedom—being detained for four years—because of the article. They insisted that there is an inclination among law enforcement apparatus to refer to the *fatwa* of Indonesian Council of Ulama, which have constitutionally no authority to judge whether a religious group or belief is deviant from Islam. On behalf of Tajul Muluk and his followers, they therefore demanded an abolishment of Article 156a and the Law as well.

Article 3 of the Law No. 1 of 1965 actually sought to limit the application of Article 156a. It is stated that this article is only applied for those ignoring warning by the government authorities in the form of a joint decision to be issued by Minister of Religious Affairs, Attorney General and Minister of the Internal Affairs: Those stopping their artivities after being warned by the authorities cannot be prosecuted. The petitioners argued that the necessity for the government authorities to warn 'any deviant sect' by issuing a joint decree is a condition for the application of Article 156a and this is justified

by various jurisprudences, including the verdict of the District Court of Polewali on 28 June 2006. In the case of Tajul Muluk and his followers, they have never received such a warning from the government authorities, but directly to confront phisical attacks by the Sunni majority and persecution by the legal apparatus. In the petitioners' opinion, the application of Article 156a on Tajul Muluk and his followers clearly violates the citizents' freedom to profess religion and to worship according to their respective beliefs.

The petitioners also questioned the Constitutional Court's understanding that the right and authority to determine true teachings of a religion belong to the parties within the religion. According to the Court, every religion has its principal teachings generally accepted by followers of the religion. Moreover, as a country that adopts the principle of inseparability between religion and the state, Indonesia has the Ministry of Religious Affairs charged not only with a special duty to serve and protect the growth and development of religions, but also has the apparatus and organization to collect opinions of religious authorities within a certain religion. Therefore, the state does not autonomously determine the principal teachings of a religion, but through its capacity to collect opinions so as to reach an agreement of the parties within the religion in question. Acoording to the petitioners, by allowing the Ministry of Religious Affairs to collect opinions of religious authorities of a certain religion in order for them to determine correct fundamental doctrines of the religion the state denies citizens' right to believe and practice their own religion and belief. Given a diversity of religious groups and opinions within a certain religion, the Ministry of Religious Affairs was inclined to simplify the matter by relying on official religious bodies and institutions representing the existing religions. Hence, the Indonesian Council of Ulama's dominant position in defining what true and not true about Islam, for instance.

An expert witness in the case, I myself questioned the Indonesian Council of Ulama's authority through its *fatwa* to judge whether a religious belief or sect (religious organization) is heretical and theologically misleading so that its followers must return to true teachings of the religion. The Court's decision in Madura to punish Tajul Muluk and his followers clearly referred to the *fatwa* of the Indonesian Council of Ulama in East Java stating that Shi'ite teachings propogated by Tajul Muluk are heretical and misleading. I argued that *fatwa* is a non-binding legal opinion from the perspective of

Islamic law and hence, contingent to certain contexts, mostly political. Ulama themselves have differing opinions on every legal issue as their techniques of drawing legal inferences vary along with their *madhhab* preferences. Indeed, Islam does not prevent Muslims from having different opinions not only on legal issues but also on theological issues pertaining to its fundamental belief and teaching. The significance of political context for a *fatwa* is evidenced in the *fatwa* on Shiite in 1984 by the Indonesian Council of Ulama, which were then forced to emphasize harmony among different religious groups along with the government policy of making Pancasila as the sole fondation (*asas tunggal*) of all political, social, cultural and even religious activities.This *fatwa* only stated that there is a need for Indonesian Muslims to be aware of destructive (meaning political) influences of Shiites on religious harmony in the country.

Moreover, I argued that in Islamic tradition theological debates have abounded since the early days of Islam. After the death of the Prophet Muhammad, the debates have become more intense along with Muslims' encounter with Greek philosophical tradition. Touching on fundamental doctrines of Islam, including the issues of God, prophethood of Muhammad, the authenticity of the Quran, destiny, and Judgment Day, the debates took place within the specific domain of *mutakallimun*, or theologians. Ideas and opinions arising from the debates were called *ra'y* or theological opinions and these were beyond the authority of *mufti*s whose domain was confined to respond to legal issues by using legal categories such as obligatory, recommended, permitted, disapproved and forbidden. The theological opinion, on the contrary, examined a thought, deed or action of a person from a theological perspective: Whether that is false and misleading, for example. Those having theological opinions will bear on their shoulder theological consequences, not legal consequences. And the theologians always asserted that this is *ra'y* or theological opinion, which has accordingly nothing to do with legal affairs. In a theological conception, one having the authority to lay down consequences to such actions is not ruler or theologians, but God alone. If the person is declared infidel from a certain theological point of view, he would be prepared to accept theological consequences, being punished by God.

Conclusion

This paper has shown that recent tensions and conflicts occuring within certain religious group and among different religious groups have inextricably linked to the dynamics of political transition in the aftermath of the demise of Suharto's New Order authoritarian regime in 1998. The failure of *Reformasi* to touch on the management of religious diversity has positioned religion in a complicated situation via-a-vis democracy. In fact, despite the declining threats of Islamic radicalism and terrorism, Indonesia has not been away from possible explotion of religious conflicts. Demonstrations against minority religious groups organized by conservative and hard-line Muslim groups have repeatedly erupted. The most dramatic occured when a group of people in Cikeusik Banten attacked Ahmadi community and burned down their houses. Similar tragedy occurred when a group of Sunni Madurese majority attached Shiite community, the followers of Tajul Muluk, in Sampang and displaced them from their home town. Perpetrators of violence even succeeded in cancelling the visit to Indonesia by singer Lady Gaga and the speaking tour by Irshad Manji, the Canadian lesbian Muslim author and activist.

At the center of the issue lies the controvertial Law No. 1 of 1965 that to some extents has granted a legitimacy for hard-line and conservative Muslims to intimidate religious minorities on the basis of an accusation that their religious belief and practice amount to blasphemy or defamation of a religion, which is prohibited by the Law. Human right activists and civil society organizations made attempts to demand judicial reviews on the Law. The petitioners highlighted importance of religous freedom as guaranteed by the Indonesian Constitution. The Law itself has its own historical background and was issued within certain political context related to mounting threats of Communism leading to the failed Communists coup in 1965. Suharto's New Order regime sought to appropriate the Law for its own interests especially to maintain its hegemony and power. Despite the rejection by the Constitutional Court of the judicial reviews, the attempts made by the human right activists and civil society organizations remain crucial to remind the Indonesian government of the importance of a proper management of religious diversity, which is in line with the spirit of religious freedom guaranteed by Islam.

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Notes:

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[2] In the Jakarta Charter there is a stipulation that requires Muslims to conform to the *shari`a,* a requirement that would place the state unequivocally behind Islam. This stipulation was removed from the Pancasila, whose first principle simply contains the words "Believe in One God [*Ketuhanan Yang Maha Esa*]."

[3] This law was initially issued in the form of a presidential decree. It was made into a law by Law No. 5/1969.

[4] The attempt made by Muslim leaders to include the seven words into the Indonesian Constitution was strongly challenged secular *abangan* nationalists and like-minded leaders who preferred a secular republican model based on the Pancasila and the Constitution of 1945. As a result, many Muslim leaders

felt betrayed. See B.J. Bolland, *The Struggle of Islam in Modern Indonesia* (The Hague: Martinus Hijhoff, 1982).

[5]The process of this Judicial Review, where I was involved as one of expert witnesses, is recorded in draft book Yayasan LBH Universalia, "Permohonan Pengujian Pasal 156A KUHP Juncto Pasal 4 UU Nomor 1/PNPS/1965 tentang Pencegahan Penyalahgunaan dan/atau Penodaan Agama Kepada MK RI Perkara Nomor 85/PUUX/2012 (Jakarta: Yayasan LBH Universalia, 2014).